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JUN 29 1981
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81-77

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

No._____

JESSE MARVIN CLEVELAND, JR.,
Petitioner

v.

GAYLORD CLEVELAND, Executor
Estate of Jesse Marvin Cleveland

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

JESSE CLEVELAND
215 Copeland Road N.E.
Lower Level
Atlanta, Georgia 30342

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QUESTIONS PRESENTED

1. Whether the state trial judge comitted error when he dismissed the petitioner's appeal from a Georgia probate court by granting the respondent's plea of estoppel.

2. Whether the state trial judge committed error when he ruled in the said order of dismissal by estoppel that the petitioner had accepted $200.00 a month checks from the decedent's estate, "with full knowledge of the facts and financial condition of his father's estate up to the present time".

3. Whether the state trial judge committed error when he ruled in the said dismissal order that "the petitioner's caveat and objection to the validity of his late father's will is not well taken, because his action is not consistent with his participating in the benefits of the said estate, by accepting the monthly payments to him, pursuant to Item II

of said will, and in terms of law, petitioner is estopped from contesting the validity of the will".

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PETITION FOR A WRIT OF CERTIORARI
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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Jesse Marvin Cleveland, Jr., the petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Georgia entered in the above entitled case on April 8, 1981.

Opinions Below

The opinion of the Supreme Court of Georgia is unreported and is printed in Appendix A hereto, infa, page 17. The judgment of the Rockdale County, Georgia, Superior Court is printed in Appendix A hereto, infa, page 14. The judgment of the Rockdale County, Georgia, Probate Court is printed in Appendix A hereto, infa, page 13.

JURISDICTION

The judgment of the Supreme Court of Georgia (Appendix A, infa, page ___) was entered on April 8, 1981. The jurisdiction of the Supreme Court is invoked under 28 USCA §§ 1257.

STATUTE INVOLVED

Section 1 of the Fourteenth Amendment

of the United States Constitution provides that no state may deprive anyone of their property without due process of law. The courts have denied the petitioner his birthright of inheritance without the pretense of any Georgia state statute to warrant such action.

STATEMENT OF CASE

Jesse M. Cleveland, Sr., died on December 8, 1978, leaving as surviving heirs two sons; Jesse M. Cleveland, Jr., and Gaylord M. Cleveland.

An application for appointment as administrator of that estate was made by petitioner, Jesse M. Cleveland, Jr., on December 11, 1978, in the Probate Court of Rockdale County, Georgia. Without any notice to or service upon the petitioner; respondent, Gaylord Cleveland, filed an alleged will of the decedent in that court on December 12, 1978, and applied for probate in common form. The petitioner was never notified of this development by the probate judge of that court.

Common form probate was granted in that court and the petitioner's motion for probate in solemn form was denied. An appeal was taken to the Superior Court of Rockdale County, Georgia, and dismissed by Judge Clyde Henley upon the granting of a plea of estoppel filed by respondent.

The respondent, in the meantime, went to Germany, taking the decedent's records with him.

The alleged will of the decedent provided that,

(a) 25% of his estate would go equally to his two sons;

(b) 20% of the estate to his church

(c) 15% equally to each of his two granchildren by the respondent.

There was no real estate in the decedent's estate or proceeds derived from the sale of real estate in the decedent's estate.

The only major tangible piece of property was a 1972 Chevrolet Impala automobile which the respondent took and sold to

his mother for the nominal sum of $100.00 in January, 1979. The respondent never accounted for those proceeds in the decedent's estate.

In addition in 1980, respondent, Gaylord Cleveland, took approximately $200.00 from the collection of one of the decedent's business account receivables and failed to account for that money to the decedent's estate.

Likewise on May 12, 1980, the respondent's lawyer, Clyde Eberhardt, testified by way of deposition that the decedent's estate had been consolidated and the funds all divided in accordance with the indicated percentages so that the only funds left in the estate were $2500.00 for expenses. This testimony was false.

More than twenty court cases for the collection of the decedent's business accounts receivables are pending in the State Court of Fulton County, Georgia, alone.

When the appellant obtained an order in the Superior Court of Rockdale County, Georgia, requiring the respondent to pay for photostat copies of the decedent's canceled checks from the decedent's business and personal bank accounts, the respondent had that order overturned by the non-committed superior court judge, Clyde Henley.

The Supreme Court of Georgia refused to hear the petitioner's appeal to that body on April 8, 1981.

REASONS FOR GRANTING WRIT

In the respondent's superior court brief in support of his plea of estoppel, the respondent stated that the petitioner has been receiving monthly $200.00 payments pursuant to the provisions of the decedent's will; and in terms of the law a beneficiary cannot accept a benefit with full knowledge of the facts, and at the same time contest the validity of the

document under which he accepts a benefit. In support of that proposition, the respondent cited Jones v. Congdon, 223 Ga. 284, Banks Brothers v. Lester, 137 Ga. 34, and Medlock v. Merritt, 102 Ga. 212.

Jones, supra, and Banks Brothers, supra, are examples of the common law principles of estoppel by deed. The legatees in those two cases accepted a deed of real estate and took title before attempting to caveat the will.

Medlock v. Merritt, supra, was a variation of the same principle when the legatee gave a deed of assent and accepted proceeds in satisfaction of his claim to part of the testator's real property.

The petitioner has not accepted any title of real estate or proceeds derived from the sale of real property from the estate of the decedent. The only physical property in that estate, an automobile and personal effects, were converted by the respondent.

The appellate courts of Georgia have never held that a heir at law is estopped to caveat an alleged will of a decedent, if the heir accepted monetary proceeds under the alleged will as a partial satisfaction of that heir's distribution under subsequent administration after a successful caveat of the alleged will if no real estate were involved.

Furthermore, in Jones, supra, the Supreme Court of Georgia distinguished the principle of estoppel by deed from the facts analogous to the petitioner's cause of action.

"The Gaither decision [Gaither v. Gaither, 23 Ga. 521], was cited in Abercrombie v. Hair, 185 Ga. 728, 731, as authority for the proposition that acquiescense of a next of kin in the probate of a will in common form or their call for proof in solemn form would not preclude them from caveating the will when offered in solemn. This alone would not work an estoppel, but accepting and retaining a deed of assent to a devise of property under the will with knowledge of all the facts, as in this case, does

estop".

The probate of the alleged will here in common form, was accomplished without the knowledge of the respondent, and even after petitioner's application for probate in solemn form, two Georgia state judges refused to call for a full accounting of the proceeds in the decedent's estate.

As a result, the petitioner to this day has no exact knowledge of the full extent of his late father's estate.

In Printup v. Smith, 212 Ga. 501, 502, the holding of Gaither, ibid, was further amplified by the showing that the heir and executrix in Gaither, ibid, at the time of probate, did not know the facts upon which she later sought to have the will set aside. As executor, the heir in Gaither, ibid, had already made distributions of some estate assets; but could still caveat that will.

Obviously the petitioner stands in the same position as the heir in Gaither, supra, and can legally caveat an alleged will under whose provisions the petitioner would receive only a part of the proceeds the petitioner would receive under a subsequent administration of the decedent's estate.

Conclusion

Will caveats cost thousands of dollars in legal fees and discovery costs. The average person cannot meet such costs unless they accept monetary payments from an alleged will to help pay those costs. Doing this is neither wrong, legally or morally, or legally inconsistent with their position in applying for a will caveat.

When the courts of Georgia refused to adjudicate the petitioner's legitimate will caveat, they denied the petitioner his constitutional rights under the Fourteenth Amendment, and allowed his birthright to be stolen with impunity.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

Jesse Cleveland

Jesse Cleveland
Petitioner Pro Se
215 Copeland Road N.E.
Lower Level
Atlanta, Georgia 30342

CERTIFICATE OF SERVICE

On the 16th day of June, 1981, a true copy of the foregoing instrument was handdelivered to the following individual by the petitioner:

Clyde Eberhardt
Standard Federal Building
Suite 907
Atlanta, Georgia 30303

Jesse Cleveland
Jesse Cleveland

APPENDIX A

OPINIONS BELOW

Probate Court Of Rockdale County
State Of Georgia

Jesse M. Cleveland, Jr.,
Caveator

Order

v.

Gaylord Cleveland, Executor
Estate of Jesse Cleveland

The issues raised by the petition in application for probate in solemn form, caveat and plea of estoppel coming on to be heard in regular order after notice to the parties and after hearing evidence and argument of counsel, and the consideration of the Propounder's Plea of Estoppel, and argument thereon,

ORDERED that the said caveat is dismissed, with costs on the caveator:

Further Ordered that the Will be admitted to Record as the last Will and Testament of JESSIE MARVIN CLEVELAND, Deceased, in common form as the law in such cases provide.

Further Ordered that Letters Testamentary issue to the said GAYLORD MARK CLEVELAND, as Exeedtor of said Will.

IN OPEN COURT this 1st day of June, 1979.

J. T. Shumlus
Judge, Probate Court
Rockdale County,
Georgia

No. 2

Superior Court Of Rockdale County
State Of Georgia

Jesse Marvin Cleveland, Jr.,
Appellant

v.

Civil Action
No. 1710

Gaylord Cleveland, Executor,
Est. of Jessee Marvin Cleveland,
Appellee

Order-On-Plea Of Estoppel

The above matter on the Plea of Estoppel coming on for hearing to be heard

pursuant to the order of June 12, 1980, and both parties being before the court, and hearing evidence and argument of counsel,

IT IS CONSIDERED, ORDERED AND ADJUDGED that on the basis of the pleadings, the Admissions of Appellant to the Request for Admissions submitted by Appellee, and the documentary evidence consisting of a series of checks paid to Appellant from the estate regularly each month, beginning in January, 1979, in the amount of $200.00 each month, beginning in January 1979, and accepted by him, with full knowledge of the facts, and financial condition of his father's estate up to the present time.

That Appellant's caveat and objection to the validity of his late father's will is not well taken, because his action is not consistent with his participating in the benefits of the said estate, by accepting the monthly payments to him, pursuant to Item II of said will, and in terms of law, appellant is estopped from contesting the

validity of the will, from which his monthly checks come from.

The court is also aware that Appellant is well represented by counsel, and is himself learned in the law as he is presently a member of the Bar of Georgia, and cannot be heard that he is not aware of his inconsistent position.

It further appearing that there is no material question or issue of fact to submit for the consideration of a jury, this court must accordingly pass on the issue of law involved and does hereby consider the Plea of Estoppel as a matter of law, and the same is hereby sustained.

This 10th day of July, 1980.

Clyde Henley
Judge, Superior Court
Stone Mountain Circuit

No. 3

SUPREME COURT OF GEORGIA

Decided April 8, 1981

Judgment affirmed without opinion pursuant to Rule 59(1) of this court.

All the Justices concur